IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11991 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVINDBHAI GAGAJIBHAI SINDHAV

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11991 of 1994

MR SK BUKHARI for Petitioner.

Mr. KT Dave, AGP for Respondent.

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 23/04/2004

ORAL JUDGEMENT

The petitioner in this petition under Article 227 of the Constitution of India has challenged the order passed by the Gujarat Revenue Tribunal dated 27.4.1994 in Review Application No. TEN.C.A.18/93 by which the Tribunal has held that in view of Section 18(1)(c) the whole Survey No. 151 must be declared as surplus land.

2. Proceedings were initiated under the provisions of the Gujarat Agricultural Land Ceiling Act, 1960 (hereinafter be referred to as 'the Act') and it was found that the petitioner was holding 76 acres and 32 gunthas of land and the Mamlatdar and ALT, Vadhvan, by order dated 30th April 1987 held that the petitioner was entitled to retain 54 acres of land and as the holding of the petitioner was 76 acres and 32 gunthas, declared 22 acres and 32 gunthas of land as surplus land.

3. Being aggrieved and dissatisfied with the said order passed by the Mamlatdar, the petitioner had preferred Ceiling Appeal No. 2/86-87 before the Deputy Collector, Vadhvan, Sub-Division, Surendranagar, and the Deputy Collector, by order dated 1st February 1988 dismissed the said appeal and confirmed the order passed by the Mamlatdar and ALT.

4. Being further aggrieved by the aforesaid orders, the petitioner preferred Revision Application No. TEN.B.A. 272/88 before the Gujarat Revenue Tribunal. The Tribunal by judgment and order dated 19th October 1992 held that the applicant is entitled to claim 54 acres towards one unit, plus 21 acres and 24 gunthas towards 2/5 unit totalling 75 acres and 24 gunthas of land. As the holding of the applicant was 76 acres and 32 gunthas and as the applicant was entitled to retain 75 acres and 24 gunthas of land, 1 acre and 16 gunthas of land was required to be declared as surplus land. However, the Tribunal found that if 1 acre and 16 gunthas of land is taken, then there would be a fragmentation which was required to be taken from any of the survey numbers and therefore giving benefit under Section 18, sub-section (1)(a) declared that the applicant is entitled to hold 75 acres and 24 gunthas of land as against 76 acres and 32 gunthas of land, and 1 acre and 16 gunthas of land which was declared as surplus land cannot be taken considering the provisions of the Act, more particularly under Section 18(1)(a)(a) of the Act. It seems, that the State Government was of the opinion that the benefit of Section 18(1)(a) is wrongly given, and instead of that provisions of Section 18(1)(c) would be applicable, and therefore the State had preferred Review Application No. TEN.C.A.18/93 before the said Tribunal, and the Tribunal accepting the argument on behalf of the State Government declared 2 acres and 18 gunthas of land from the Survey No. 151 as surplus land which will go to the State Government under Section 18(1)(c) of the Act.

5. Being further aggrieved and dissatisfied with the order passed by the Tribunal dated 27.4.1994 in Review Application No. TEN.C.A. 18/93 in declaring 2 acres and 18 gunthas of land from the land of Survey No. 151 and holding that the said land will go to the State Government under Section 18(1)(c) of the Act, the present Special Civil Application is filed under Article 227 of the Constitution of India.

6. Shri Sunil Mehta, learned advocate appearing on behalf of the petitioner had submitted that the Tribunal has no jurisdiction to review its own order and the Tribunal wrongly entertained the Review Application and exercised the jurisdiction under Section 17 of the Bombay Revenue Tribunal Act, 1957. He has submitted that unless and until there is a patent error the powers should not have been exercised by the Gujarat Revenue Tribunal. Shri Mehta has further submitted that even otherwise on merits also the Tribunal has erred in applying Section 18(1)(c) of the Act. He has stated that on the contrary the provisions of Section 18(1)(a) of the Act would be applicable and not Section 18(1)(c) of the Act. For that purpose, he has relied upon the judgment of this Court in the case of Kalyanbhai Nathubhai Vs. State of Gujarat & Ors. - 1994 (2) GCD 17 (Guj). This Court [Coram: A.N. Divecha, J.,as he then was] has held that if the excess land would become a fragment then the case would be governed by Section 18(1)(a) read with sub-section (2) of the Act and the provisions of Section 18(1)(c) would not be applicable and therefore Shri Mehta had requested to allow the present Special Civil Application.

7. On the other hand, Shri K.T. Dave, learned AGP, appearing on behalf of the respondent State Government had tried to support the order passed by the Tribunal in the Review Application. However, he could not point out anything with regard to applicability of Section 18(1)(c) of the Act.

8. In the case of Kalyanbhai Nathubhai (Supra), the petitioner was found holding land admeasuring 54 acres and 7 gunthas of land as on 1st April 1976. The first authority declared 3 acres and 22 gunthas as surplus land. However on appeal before the appellate authority the appellate authority came to the conclusion that the petitioner's holding was to the tune of 52 acres and 11 gunthas of land and it was in excess of the ceiling area by 1 acre and 26 gunthas. It was however found that since the excess land would be a fragment, the petitioner was required to surrender a parcel of land admeasuring 2 acres as surplus. That order came to be challenged

before the Gujarat Revenue Tribunal and the Tribunal rejected the said Revision Application. The aggrieved petitioner preferred Special Civil Application before this Court, and considering the provisions of Section 18(1)(a) and Section 18(1)(c) of the Act, this Court held as under;

"3. The Appellate order at Annexure-B (part) to this petition cannot be sustained in law even for a moment. The Appellate Authority has clearly found that the petitioner's holding was in excess of the ceiling area by 1 acre 26 gunthas. In his impugned Appellate order the Appellate Authority has further found that the excess land would be a fragment. In that view of the matter, the case would be governed by Section 18(1)(a) read with sub-section (2) of the Act. In that view of the matter, the petitioner would be entitled to retain the excess land under the Act. The contrary conclusion reached by the Appellate Authority that, since the excess land was a fragment, the petitioner was required to surrender the minimum two acres of land will have to be branded as illegal and invalid."

9. Considering the aforesaid judgment and the facts of the present case, the judgment in the aforesaid case is squarely applicable to the facts of the present case. Here also Survey No. 151 was admeasuring 2 acres and 18 gunthas of land. However, 1 acre and 2 gunthas was required to be declared as excess surplus land and therefore the remaining land became fragment. Therefore the provisions of Section 18(1)(a) would be made applicable and not 18(1)(c) of the Act. Under the circumstances, the Gujarat Revenue Tribunal has materially erred in holding that Section 18(1)(c) of the Act would be applicable and consequently erred in declaring 2 acres and 18 gunthas of land from Survey No. 151 as surplus land, and further erred in passing the order that the said land would go to the State Government under Section 18(1)(c) of the Act. Accordingly, the impugned order passed by the Gujarat Revenue Tribunal dated 27.4.1994 in Revision Application No. TEN.CA.18/93 is quashed and set aside and the judgment and order passed by the Tribunal dated 19.10.1992 in Revision Application No. TEN.B.A. 272/88 is hereby restored. The Special Civil Application is allowed. Rule is made absolute with no order as to costs.

rmr. [M.R. Shah, J.]